



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Craig W. Hiltz, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
John Lee, Associate Member

DECISION - BOARD OF APPEALS CASE NO. 15-18

APPLICANT:
Michael Mawn

LOCATION OF PROPERTY INVOLVED:
595 Washington Street
Walpole Assessors Map 27, Parcel 254
Zoning District: RB

APPLICATION:

A **Special Permit** under Section 5-B.2. of the Zoning Bylaw to allow the installation of an "in-law" suite in the basement as previously permitted.

On July 25, 2018 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Special Permit**.

The following members were present and voting:

Craig W. Hiltz, Vice Chairman
Robert Fitzgerald, Clerk
Susanne Murphy, Member
Mary Jane Coffey, Member

A motion was made by Murphy and seconded by Coffey to grant a Special Permit under Section 5-B.2. of the Zoning Bylaw to allow the installation of an "in-law" suite in the basement as previously permitted.

The vote was 4-0-0 **in favor**; (Hiltz, Murphy, Fitzgerald, Coffey voting); therefore the application for a **Special Permit** is hereby **granted**, subject to the following conditions:

CONDITIONS:

1. The Accessory In-Law Suite shall not be held in separate ownership from the principal dwelling unit.

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2. The Accessory In-Law Suite shall only be occupied by individuals within the third degree of kinship of the owner of the principal dwelling unit.
3. The property owner shall record this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Board of Appeals, Town Clerk and Building Department.
4. When ownership of the property changes, the new owner shall notify the Building Commissioner so as to update the Accessory In-Law Suite List.
5. The square footage of the Accessory In-Law Suite shall be as shown on the plan submitted with the Application at the public hearing, and shall not be more than 1059 s.f.
6. The Applicant shall receive a Certificate of Occupancy from the Building Department before occupying the Accessory In-Law Suite.
7. There will be one water meter for the house and Accessory In-Law Suite unless the Applicant receives permission from the Board to install a second meter.
8. There shall be no lodgers in either the original dwelling unit or the Accessory In-Law Suite.
9. The Applicant will work with the Fire Department and E911 to determine if the Accessory In-Law Suite requires its own address.
10. The life safety devices (smoke and CO detectors) in the main house and Accessory In-Law Suite will be brought into compliance with the current fire code.
11. Plans with Smoke and CO detectors will be submitted to the Walpole Fire Department for review and approval, with a follow up Fire Department inspection for the performance and locations that are required.
12. There shall be no additional relief granted.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-B.2. to allow the requested Accessory In-Law Suite at the subject property. The Board finds that the in-law suite is in character with and follows the intent of the Zoning District in which it is located. Accordingly, the Board has determined that the Special Permit requested is warranted. Specifically, the Board made the following findings pursuant to Section 2.2.B.(1) of the Zoning Bylaw:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board found that the requirements of Section 5-B.2(C) have been satisfied by the applicant or by the conditions established above. The lot size exceeds the minimum requirement of 15,000 s.f.; the Board approves an area of 1,059 for the Accessory In-Law Suite; there are no more than two exterior landings located outside the required setbacks; the Accessory In-Law Suite does not require any change in the footprint of the structure, which continues to maintain the appearance of a single-family home; all dimensional requirements of the Zoning Bylaw comply with applicable requirements; and adequate parking is provided.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Applicant stated that the in-law suite will be occupied by his daughter, her husband and child, and the parking spaces on the lot are adequate for the lot, which is 19,000 s.f. acres in size. Thus, the Board finds this condition satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The in-law suite will be residential in nature, and will be occupied by the Applicants' daughter, her husband, and child, and therefore there will be no employees, customers or visitors so as to adversely affect the immediate neighborhood. Thus, the Board finds this condition satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds the single-family dwelling, as modified to accommodate the in-law suite in the basement, conforms to the dimensional requirements of the Zoning Bylaw as shown on plans which were presented at the public hearing. The in-law suite complies with the lot coverage and setbacks requirements due to it being located in the basement of an already existing structure, and therefore no changes or expansions are being made to the outside of the single family house or the square footage. Thus, the Board finds this condition satisfied.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The in-law suite is within the existing dwelling, located in the basement, therefore there will not be any fire, explosion, emission of wastes or other causes that would be

dangerous to the immediate neighborhood due to a typical residential use of the space. Thus, the Board finds this condition satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The in-law suite is within the existing dwelling, located in the basement, and therefore will not create such noise, vibration, dust, heat, smoke, fumes, odor, flare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Thus, the Board finds this condition satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The in-law suite is within the existing dwelling, located in the basement, which will not require any alterations to the exterior of the already existing dwelling, therefore not adversely affecting the character of the immediate neighborhood. Thus, the Board finds this condition satisfied.

(h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". The proposed in-law suite complies with the performance standards of the By-Law and as such is consistent with the intent and purpose of *Section 5-B.2. Accessory In-Law Suites* of the Bylaw. As a result, this condition is satisfied.



Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been

filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk 

RF/am

cc:	Town Clerk	Engineering	Planning Board	Applicant
	Board of Selectmen	Building Inspector	Conservation Commission	Abutters

This decision was made on July 25, 2018 and filed with the Town Clerk on August 7, 2018